

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Redevelopment of Spectrum to
Encourage Innovation in the
Use of New Telecommunications
Technologies)

E.T. Docket No. 92-9

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To: The Commission

NOV 19 1993**REPLY OF UTAM**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management ("UTAM") hereby submits its reply to comments on the petitions for reconsideration and/or clarification filed in the above-captioned docket.¹ Those petitions raise important issues concerning the availability of tax certificates to promote clearing of unlicensed spectrum, the scope of the public safety exemption and its impact on the costs and timing of band clearing, the use of retuning as a method of relocation for microwave links, and the rules associated with relocating microwave systems operating in both the licensed and unlicensed bands. As set out below, UTAM urges the Commission to resolve these questions promptly in a manner that will permit the industry to move forward to

¹ Comments were filed by MCI Telecommunications Corporation, American Personal Communications, Apple Computer, Inc., Unlicensed PCS Ad Hoc Committee For 2 GHz Microwave Transition and Management, Utilities Telecommunications Council, American Telephone and Telegraph Company, and American Petroleum Institute.

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bring the benefits of unlicensed Personal Communications Services ("PCS") to the public.

I. THE COMMENTS STRONGLY SUPPORT UTAM'S PROPOSAL TO EXTEND THE AVAILABILITY OF TAX CERTIFICATES TO MICROWAVE RELOCATIONS FOR UNLICENSED PCS

In its petition for reconsideration, UTAM proposed that tax certificates be made available to microwave licensees voluntarily relocating from unlicensed PCS spectrum.² In order to preserve the incentive for early, consensual relocation, UTAM proposed that tax certificates be granted only where the microwave licensee concludes an agreement to relocate without resort to dispute resolution procedures.³ Numerous commentors, including Apple, MCI, and API, support such an expansion in tax certificate availability.⁴

UTAM submits that its proposal strikes an appropriate balance between the concerns of those who would limit tax certificates to agreements reached during the "voluntary" negotiation period⁵ and those who would only deny them where a microwave licensee's objections to a relocation agreement

² UTAM Comments at 9-10.

³ Id. at 10.

⁴ See, e.g., Comments of Apple Computer, Inc. at 4-5, Comments of American Petroleum Institute at 5-6, Comments of MCI Telecommunications Corporation at 5-6.

⁵ See APC Comments at 17-18.

were ultimately found to be baseless.⁶ The standard proposed by UTAM -- that tax certificates would be available only where there is no resort to dispute resolution mechanisms -- is fully consistent with the Commission's intent to use tax certificates as an incentive to voluntary relocations. Most importantly, this policy will provide important incentives to assist in the complete nationwide band clearing essential to full deployment of unlicensed PCS.

II. A NUMBER OF PARTIES NOTE THAT EXPANSION OF THE PUBLIC SAFETY EXEMPTION WOULD INCREASE THE COSTS AND DELAYS IN UNLICENSED PCS DEPLOYMENT

Although not taking a position on the pending requests for reconsideration, UTAM explained that any expansion of the public safety exemption from mandatory relocation would increase relocation costs and delay the introduction of non-coordinatable unlicensed PCS systems and devices.⁷ The majority of commentors agreed with UTAM's analysis.⁸ UTAM asks that the Commission take these concerns into account in ruling on the pending petitions.

⁶ See UTC Comments at 8-10.

⁷ UTAM Comments at 10-11.

⁸ E.g., MCI Comments at 3-4; Apple Comments at 1-3; APC Comments at 11-14.

**III. THE RECORD SUPPORTS PERMITTING CONSENSUAL
RETUNING OF MICROWAVE STATIONS AND MAKING
GOVERNMENT SPECTRUM AVAILABLE FOR THAT PURPOSE**

As UTAM stated in its comments, the Commission should allow retuning of microwave licensees as proposed by Apple where all affected parties agree.⁹ Even those parties who generally oppose Apple's retuning proposal do not object to its use where the microwave licensee, UTAM, and any affected PCS licensee reach mutually acceptable agreements.¹⁰ The Commission should therefore clarify that retuning will be permitted under these circumstances.

UTAM further agrees with Apple that the Commission should seek access from NTIA to government spectrum in the 1710-1850 MHz band to accommodate retuned or relocated microwave stations from the unlicensed PCS band.¹¹ As Apple notes, reallocation of this spectrum would be advisable to the extent it will reduce costs and speed the band clearing process.¹² This would serve the Commission's goal of expediting the deployment of both coordinatable and non-coordinatable unlicensed systems and devices.

⁹ UTAM Comments at 13.

¹⁰ See API Comments at 6-7; UTC Comments at 14 n. 15.

¹¹ See Apple Comments at 3-4.

¹² Id.

**IV. CLARIFICATION IS REQUIRED CONCERNING
THE TIMING OF THE TRANSITION PERIOD
AND COST REIMBURSEMENT OBLIGATIONS
WHERE A MICROWAVE LINK OPERATES ON
FREQUENCIES IN BOTH THE LICENSED AND
UNLICENSED BANDS**

UTAM agrees with Apple that the Commission should clarify that one-year mandatory negotiation period applies to relocation of all microwave stations using frequencies in the unlicensed band notwithstanding any concurrent use by a microwave licensee of a paired frequency in the licensed band.¹³ This is obviously necessary to effectuate the Commission's intent to limit the transition period afforded licensees in the unlicensed band. Otherwise, the goal of encouraging prompt clearing of that spectrum to permit the deployment of non-coordinatable systems and devices will be frustrated.¹⁴

In addition, the Commission should clarify that, where unlicensed PCS interests pay to relocate a microwave licensee operating in both the unlicensed band and another band, such as licensed PCS or MSS, an entity seeking to commence operation on the cleared frequency would be expected to reimburse the unlicensed PCS interests for a proportionate share of the relocation costs provided that the PCS or MSS licensee

¹³ Apple Comments at 5.

¹⁴ Personal Communications Services, GEN Docket No. 90-314, ¶ 288 (September 23, 1993).

required the relocation to meet its spectrum needs. In establishing the policies and rules governing the clearing and use of unlicensed PCS spectrum, the Commission and the industry have sought to avoid the "free rider" problem under which parties that benefit from band clearing escape payment of the attendant costs. Because of the frequency separation between transmit and receive channels assigned to microwave links, this concern is not limited solely to entities within the unlicensed PCS spectrum.

Rather, a number of microwave links are likely to operate on frequencies that fall within different allocations in the 2 GHz spectrum, creating the possibility that the entity responsible for clearing the microwave operations in one band would provide a benefit to entities interested in another band when a link is relocated to higher frequencies. Whether the entity responsible for relocating the link is the unlicensed PCS representative, an MSS operator, or the PCS licensee, it is logical to require that the costs of the relocation be equitably shared by all beneficiaries. Thus, the Commission should clarify that reimbursement will be required where an entity benefits from band clearing accomplished by others and that such reimbursement would be due at the time the latecomer seeks to make use of the cleared frequency.

CONCLUSION

For the foregoing reasons, UTAM requests that the Commission (1) authorize the use of tax certificates for voluntary relocations of microwave stations from the unlicensed spectrum; (2) take note of the fact that any expansion of the public safety exemption will increase costs and delays in deployment of non-coordinatable unlicensed PCS systems and devices; (3) declare that consensual retuning will be permitted and that government spectrum at 1710-1850 GHz should be available for such relocation purposes; (4) clarify that the one year mandatory negotiation period applies to all microwave links operating on frequencies in the unlicensed band; and (5) confirm that where a link operating in multiple 2 GHz bands is relocated by an entity operating in only one band, that entity will be entitled to reimbursement of a proportionate share of relocation costs from an entity operating in the other cleared band provided that the latter required the relocation to meet its spectrum needs. Further, UTAM urges the Commission to resolve these and all other pending issues promptly so that the clearing of

the unlicensed band and the deployment of unlicensed PCS systems and devices can proceed expeditiously.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 1993, I caused copies of the foregoing "Reply of UTAM" to be mailed via first-class postage prepaid to the individuals listed on the attached Service List.


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